

(1974) 09 MAD CK 0023
In the Madras High Court
Case No : Writ Appeal No. 334 of 1967

Panchayat Board, Vettuvakottai

APPELLANT

Vs

V. Lakshmanan and Another

RESPONDENT

Date of Decision : 24-09-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Panchayats Act, 1958 — Section 86, 86(2), 86(4), 86(5)

Citation : AIR 1975 Mad 216 : (1975) 88 LW 133

Hon'ble Judges : Ramaprasada Rao, J; Maharajan, J

Bench : Division Bench

Advocate : K. Alagiriswami, for the Appellant; N.K. Ramaswami and M.A. Sadanand, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—On the short ground that the appellant panchayat did not conform to the statutory prescription as laid down in

Notification No. 33 made under the powers of the rule making authority under sub-sections (2), (4) and (5) of S. 86 of the Tamil Nadu

Panchayats Act, 1958, the absolute rule issued by Ramakrishnan, J. has to be assented to.

2. The short facts are the appellant panchayat admittedly wanted to utilise a grazing poramboke for the purpose of planting fruit bearing trees

thereon and also for the purpose of raising fodder for the cattle which fodder could be marketed later by resale to the owners of such cattle in the

Panchayat. While passing this resolution, the Panchayat did not follow the prescriptions in notification No. 33 with which we shall presently refer

to. One of the residents of the village filed the present writ petition seeking to quash the orders of the District Collector of Tanjoore dated 1-8-

1963 who in turn confirmed the order of the Revenue Divisional Officer, who approved of the change of user in the admitted poramboke land

which vested in the Panchayat. In the counter-affidavit it is said that the Revenue Division Officer on inspection and enquiry found that no

appreciable number of cattle grazed on the land in question and that therefore it would be in the interest of the generality of the community to have

coconut seedlings planted on this poramboke land and the ultimate usufruct realised therefrom be utilised for the community. He also incidentally

pointed out that in the available space fodder also could be grown and it could be marketed and the cattle which are deprived of the use of the

grazing ground by reason of the change over might get the benefit of such fodder raised on the reclaimed land by their own owners purchasing it on

the open market.

3. Ramakrishnan, J., went into the question and held that as the statutory rule which governed the situation has not been observed and followed

and also on the ground that no such conversion is possible under the provisions of the Panchayat Act, he issued the rule nisi and made it ultimately

absolute. As against this the present writ appeal has been filed.

4. It is by now well-settled that a statutory body functioning under an enactment should conform to the rules and regulations prescribed therein and

shall not in any manner violate the same and through such violation bring about a situation compelling others to abide by it and the resultants

therefrom. u/s 86(2) of the Tamil Nadu Panchayats Act, grazing grounds are classified as porambokes and they are to vest in the panchayat. The

panchayat has no doubt the power to regulate the use of such porambokes. But such regulation, however, is subject to such restrictions and

control as may be prescribed. u/s 86(5) a Panchayat. has again the power to plant trees on any poramboke which obviously includes the grazing

ground as well. But here again their activity is subject to such restrictions and control as may be prescribed. Notification No. 33 prescribes such

restrictions and controls. Sub-clause (2) of Notification No. 33 issued by the rule making authority with particular reference to Section 86(2) and

(5) runs as follows :--

2. (1) If a panchayat considers that a poramboke mentioned in Sub-section (2) of Section 86 of the Madras Panchayats Act, 1958, is no longer

required for the purpose for which it was originally intended and that it may be used for any other specified communal purpose, it shall cause a

notice to be published in the town or village in which the land is situated, specifying its survey number and the purpose for which it is required, and

inviting objections to the proposal within a specified date which shall not be less than 30 days from the date of publication of the notice. The notice

shall be published by beat of tom-tom and by affixing it in some conspicuous part of the building in which the office of the panchayat is located.

(2) After the date fixed for the receipt of objections, the panchayat shall forward its proposal together with the objections received thereon to the

Collector for issue of such orders as may be deemed fit.

(5) The panchayat shall permit the village headman, the karnam or any inspecting officer of the Revenue Department to inspect at any time any

poramboke, the use of which is regulated by it.

The other sub-clauses in this notification are merely a follow up of the above and we are not extracting them. Primarily it is incumbent on the

panchayat concerned if it intends to use or utilise a poramboke specifically earmarked for a particular purpose for another purpose to wit : the

general benefit of the community, then it has to follow the prescription and the process delineated in Clause (2) of notification 33. It is admitted in

this case that the procedure so set out in Sub-clause (2) of notification 33 has not been followed. In this case therefore the challenged order is

vitiated and it presents an apparent error. The learned Judge was therefore right in having quashed it under Article 226 of the Constitution of India,

which enables courts to remove orders issued by statutory tribunals or functionaries functioning under a statute without authority or in violation of

any prescribed rule in relation of any decision or act which it makes. The order of the learned Judge therefore has to be sustained and the writ

appeal is dismissed, but there will be no order as to costs.